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DEC 15 2010

In re Application of : DECISION ON
DICK et al :
Application No. 10/565,511 :
PCT No.: PCT/US2004/007733 :
Int. Filing Date: 13 July 2004 :
Priority Date: 23 July 2003 :
Attorney's Docket No.: 3081.151US01 :
For: METHOD, DEVICE AND ... :
TREATMENT SYSTEM : 37 CFR 1.182 and 1.181

PCT LEGAL ADMINISTRATION

This decision is in response to applicants' "PETITION UNDER 37 CFR 1.182 AND PETITION FOR WITHDRAWAL OF THE NOTICE OF ABANDONMENT," filed on 12 October 2010 to correct the PCT serial number from the transmittal letter entry of PCT/US2004/007733 to PCT/EP2004/007733 and to vacate the holding of abandonment.

BACKGROUND

On 13 July 2004, this international application was filed, which claimed priority to an application filed on 23 July 2003.

On 23 January 2006, applicants filed a Transmittal letter that contained the wrong international application no. PCT/US2004/007733 for entry into the national stage in the United States Patent and Trademark Office (USPTO), which was accompanied by, the basic national fee. No executed declaration or oath was filed at such time.

On 20 December 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by the International application number and International filing date and a copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 CFR 1.821(e). The Notice stated that the above items must be furnished within the time period set forth. The notification set a two months time limit or 32 months from the priority date for the application, whichever is later to respond, and that failure to properly respond would result in abandonment.

On 14 January 2008, applicants filed an executed declaration with a transmittal letter that contained the wrong international application no.: PCT/US2004/007733.

On 15 February 2008, the United States Designated/Elected Office mailed a Notification of Defective Response (Form PCT/DO/EO/916)... The following requirements set forth in the NOTIFICATION of MISSING REQUIREMENTS mailed 12/20/2007 have not been completed a copy of the "Sequence Listing"....

On 20 March 2008, applicants filed a letter indicating that a sequence letter is not relevant of the subject matter of this application.

On 30 July 2010, the United States Patent and Trademark Office mailed a Notification of Abandonment (PCT/DO/EO/909) because applicant had failed to respond to the notice mailed 02/15/2008.

On 17 February 2010, petitioner submitted the instant petition under 37 CFR 1.182 and 1.181.

DISCUSSION

37 CFR 1.181:

A review of the application shows that applicants incorrectly entered the international application number PCT/US2004/007733 rather than the correct number PCT/EP2004/007733 both at the initial filing on 23 January 2006 and at the time of response to the Notice of Missing Requirements on 20 December 2007. The national stage application based on international application number PCT/US2004/007733 required both an executed declaration and a sequence listing. As a result, the Notice of Missing Requirements mailed correctly indicated what was missing on the national stage filing based on applicants incorrect submission. Applicants' response of only the declaration was incomplete as it was not a proper response because applicants neither provided a petition to correct their error nor a sequence listing.

The USPTO then mailed a Notice of Defective Response indicating that applicants had not completely responded to the Notice of Missing Requirements. Applicants responded by indicating that no sequence listing was required but applicants never corrected their international application number from PCT/US2004/007733 to PCT/EP2004/007733. Consequently, a sequence listing was still outstanding based on the incorrect international application number submitted by applicants. Therefore, the application went abandoned.

Applicants did not file a petition to correct the international application number from PCT/US2004/007733 to PCT/EP2004/007733 until after applicants received a Notice of Abandonment.

Consequently, the aforementioned application was correctly abandoned for failure by applicants to properly respond to the notices mailed by the USPTO by correcting the international application number timely.

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

37 CFR 1.182:

Accordingly, after aforementioned application is revived, the petition under 37 CFR 1.182 will be reviewed.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is held in **ABEYANCE** until the aforementioned application is revived.

RECOMMENDATION

Petitioner may request revival of the application via petition under 37 CFR 1.137(b) as petitioner has provided the required reply the correction of the international application number to PCT/EP2004/007733.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section. Note MPEP 711.03(c)

This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 to rescind the Notice of Abandonment is **DISMISSED** without prejudice.

The petition under 37 CFR 1.182 is **ABEYANCE**.

The application remains **ABANDONED**.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.181." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'R. Bacares', is positioned above the printed name.

Rafael Bacares

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